

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of:

Amendment of Section 76.51 of the
Commission's Rules to Include
Decatur, Texas, in the Dallas-Fort Worth,
Texas, Television Market.

CS Docket No. 94-42

To: Chief, Cable Services Bureau

COMMENTS OF JAMES CABLE PARTNERS

James Cable Partners ("James"), by its attorneys, hereby submits its comments in the captioned proceeding looking toward the possible inclusion of Decatur, Texas, in the Dallas-Fort Worth, Texas, television market.

I. INTRODUCTION

James owns and operates the cable television system in Decatur as well as systems in Bowie, 25 miles to the northwest of Decatur and Jacksboro, 32 miles to the west of Decatur. James also owns and operates three smaller systems in Bridgeport, Alvord and Chico, north and west of Decatur. All six systems are outside of the Dallas and Fort Worth 35-mile zones but within Decatur's. Station KMPX, which instituted this rulemaking, wants to be part of the Dallas-Fort Worth television market, but it seems to have forgotten its obligation to its own city of license and to the rural area it is licensed to serve. James opposes this rulemaking first, because it is premature, and second, because the station has not proven its case. If,

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however, the Commission chooses to grant the proposal, it should accommodate the needs of the rural cable operators currently outside of the Dallas-Fort Worth market by exempting them from the obligations of network nonduplication and syndicated exclusivity. The inclusion of Decatur in the major market should not be allowed to grant an unintended windfall to the region's larger stations.

II. POSTPONEMENT PENDING COPYRIGHT LEGISLATION

KMPX's petition rests almost exclusively on the premise that it must be included in the Dallas-Fort Worth market in order to become "local" for purposes of the Copyright Act and thus avoid any copyright royalty indemnification obligations under the "must carry" provisions of the 1992 Cable Act and the FCC's rules. KMPX claims that, even as a "specialty station" it would have to indemnify cable operators in excess of \$1,000,000 per year due to the operation of the Copyright Law as it is currently written. Whatever the accuracy of this assertion, KMPX's predicate may soon fail. Legislation is in progress in Congress that will provide relief to KMPX without the need for market realignment. Last May, the Senate passed S.1485 which, in addition to extending the satellite carrier compulsory license, revises Section 111 of the Copyright Law to include in the definition of "local" those stations that are part of the television market under Section 76.55(e) of the FCC's rules. The House is considering corresponding legislation. Rule §76.55(e) defines a "television market" as the "Area of Dominant Influence" within which a station is located. Since Decatur, Texas, is within the Dallas-Fort Worth ADI, under this legislation, KMPX would be "local" for copyright purposes for all cable systems within the Dallas-Fort Worth ADI. KMPX would not need the proposed change in market designation to accomplish its goal of avoiding

copyright indemnification. Accordingly, it is appropriate to postpone any decision on this rulemaking pending the passage of copyright legislation.

III. KMPX HAS NOT PROVEN ITS CASE

Even if the Commission chooses to go forward with this rulemaking, it is clear that KMPX has not made its case. The Commission itself noted that it had been presented with no more than a "minimal case" for market redesignation. Nothing now in the record improves upon that case. KMPX cannot change the salient facts: Decatur, a town of some 4000, has virtually nothing "in common" with Dallas or Fort Worth. Of course, its residents look to Dallas and Fort Worth for shopping, for work, for entertainment, for airports, etc., but that does not create a commonality between the communities. Decatur is a small, rural town which KMPX just happened to call its city of license. There is little more to it than that. KMPX has not shown that Decatur has so much in common with Dallas and Fort Worth and is such a major feature in the region that it should be the third community in the hyphenated market. (We note that KMPX once did try to change its city of license to Plano, a community much closer to Dallas and Fort-Worth and considerably larger than Decatur.) The lack of commonality is fully disclosed by the fact is that KMPX doesn't even serve Decatur or consider it worthy of service because its Grade B contour falls short of its own city of license.

As noted, the essence of KMPX's argument is that it needs relief from potential copyright fees in order to gain "must carry" access to cable systems within its ADI. However, many of the letters attached to the station's comments show that there is also a signal strength

issue. The station will not have carriage rights irrespective of the copyright issues if its signal strength remains low.

It is clear that KMPX is most concerned about carriage in the Dallas-Fort Worth corridor, and that is obviously the bulk of the 550,000 "distant" subscribers it aims to pick up through the relief it seeks here. But those "distant" subscribers are right in the shadow of KMPX's own self-established service area and well within its Grade B contour. They are "distant" because the copyright law, following former FCC rules, uses the 35-mile zone around Decatur to determine "distant" or "local" status. Since KMPX has chosen to abandon Decatur by moving its transmitter to the heart of the Dallas-Fort Worth corridor, the natural solution to KMPX's "problem" is, as the Commission suggested in its Notice, for KMPX to undertake to become "significantly viewed". If KMPX can reach sufficient audience in the Dallas-Fort Worth area so as to be "significantly viewed", it has earned "local" status. This approach would be the least disruptive and most fitting under the circumstances.

IV. CORRESPONDING RELIEF TO RURAL SYSTEMS

KMPX also appears blind to the problems its request would cause for cable operators to its north and west. James' systems carry stations from Wichita Falls, Texas, and Lawton, Oklahoma, a hyphenated smaller market. These systems currently are not subject to network nonduplication or syndicated exclusivity requests from Dallas-Fort Worth stations because they are more than 35 miles from either of those two market stations. If Decatur joins the Dallas-Fort Worth market, the status quo will be destructively altered since the blackout rules extend across hyphenated markets. When joined to the Dallas and Fort Worth 35-mile zones, the Decatur 35-mile zone will create a new blackout area to the north and west of Decatur,

causing a complete turn around of network nonduplication and syndicated exclusivity rights. The Dallas-Fort Worth stations will now be able to exercise dominion over an area they previously had no rights in. James' cable systems will suddenly be subject to requests for blackout of Wichita Falls and Lawton stations by Dallas and Fort Worth stations. With six headends, and at least \$3000 per headend for switching equipment, the cost to James for the compliance with exclusivity rights would be at least \$18,000 per requesting station. If all possible blackout requests are made, James might have to spend well in excess of \$100,000 for switching equipment. The cost of labor for setting the switches would be at least \$10,000 per year. (Five hours per headend per month times \$30 per hour). Costs such as these are utterly inappropriate and should not be foisted upon area cable operators merely because KMPX wants to avoid copyright liability. A less drastic alternative is appropriate. At a minimum, should the Commission choose to add Decatur to the Dallas-Fort Worth market, it should simultaneously exempt systems outside the original boundaries of the market from the nonduplication and exclusivity rules.

Respectfully submitted,

JAMES CABLE PARTNERS .

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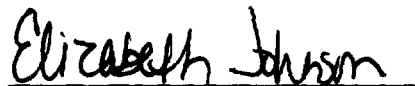
Its Attorneys

July 7, 1994

CERTIFICATE OF SERVICE

I, Elizabeth Johnson, hereby certify that I served by first class mail, postage prepaid, the foregoing Comments of James Cable Partners this 7th day of July, 1994 on the following:

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